IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 16364 of 2004

Between:

The Member Personnel, Postal Service Board, New Delhi.

..... PETITIONER

AND

A.D. Varu S/o. Late A.V. Devaswamy
Sub Post Master,Ibrahimpatnam, R.R.District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of certiorari calling for the records pertaining to O.A.No.859 of 2001, dated 03.02.2001 passed by CAT, Hyderabad, and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void abintio.

Counsel for the Petitioner:MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent : -None-

The Court at the admission stage made the following order :

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ORDER: (per the Hon'ble Sri Justice Goda Raghuram)

This writ petition is directed against the order of the Central Administrative Tribunal, Hyderabad Bench, dated 03.02.2004 in O.A.No.8590 of 2001, whereby the O.A. was allowed and the impugned order passed by the petitioner herein, dated 26.10.1999 in so far as it ordered the benefit of only 50% of pay and allowances to the respondent herein, as though he not been compulsorily retired from service be paid to him and in so far as it treated the period of his absence on compulsory retirement as duty only for the purpose of counting his pension, was set aside and directed that the respondent herein is entitled to the entirety of pay and allowances for the period, he was out of service on compulsory retirement and for treatment of such period as on duty for all purposes including continuity of service, increments, promotion, pension etc.

While the respondent herein was working as a Sub-Post Master, Amberpet Post Office, a charge memo was issued *inter alia* alleging that a) he had allowed one Smt.Y.Raja Rajeswari to work unauthorisedly as Amberpet Postal Assistant, after her relief to Kachiguda Head Office on transfer; b) that as incharge of the Post Office and contrary to his duties and responsibilities, he failed to observe the rules and allowed Smt. Raja Rajeswari to work in the Savings Bank Counter beyond the prescribed tenure; c) that he failed to check the incorrect opening balance noted in the fresh pass book of S.B.Account No.218425 issued on 29.01.1990, wherein an amount of Rs.6,744.85 ps. was shown as the opening balance instead of an actual amount of Rs.27.85 ps, thus for having violated the rules relating to the custody of blank pass books d) for having passed two withdrawals resulting in a loss of Rs.12,040/- and e) for failure to check the deposit slips with the records of S.B.Account No.218194 resulting in the fraud of Rs.13,840/-.

After a due process of enquiry, the enquiry officer submitted a report and held that the charges 'a','b','c' and 'e' were proved and charge 'd' was not proved.

The respondent submitted his explanation to the enquiry report and eventually the

disciplinary authority having agreed with the findings in the enquiry report, by proceedings dated 17.04.1996, imposed on the respondent, the penalty of dismissal from service. Aggrieved thereby, the respondent preferred an appeal to the Chief Post Master General, Hyderabad, who by the order dated 11.10.1996 modified the penalty to one of compulsory retirement. Again, the respondent herein preferred a revision to the Postal Services Board. By the order dated 16.2.1999, the revisional authority found the respondent not guilty in respect of charges 'c' and 'e' and concluded that he could only be held responsible for unauthorisedly allowing Smt.Raja Rajeswari to work as Postal Assistant and for not ensuring the tenure in her case. Consequent on this conclusion, the revisional authority categorically held that in these circumstances, the penalty of dismissal modified to compulsory retirement by the appellate authority, is not commensurate with the proved misconduct. As a result of this conclusion, the revisional authority ordered that the penalty be reduced to that of reduction of pay by three stages for a period of three years without cumulative effect. This order was passed in purported exercise of powers conferred under Rule 29 of CCS (CCA) Rules, 1965.

Thereafter, the respondent was issued a show cause notice dated 13.08.1999 calling upon him to show cause as to why the period from 19.04.1996 to 06.05.1999 (period during which the respondent was out of service consequent on the orders of dismissal modified to one of compulsory retirement by the appellate authority) be treated as not on duty. The respondent submitted his representation. There upon the order dated 25.10.1999 ensued, whereunder, the period of the respondent's absence from duty was to be treated as duty, only for the purpose of counting of service for pension, and the pay and allowances for that period were restricted to 50% of the amount that the respondent would normally have drawn but for his compulsory retirement during the said period.

Assailing the order dated 25.10.1999, the respondent preferred the O.A. In defence to the challenge presented by the respondent herein before the Tribunal, the petitioner contended that power is available under Fundamental Rule 54-A(2)(i) to deal with the period of defacto-compulsory retirement of a Government servant that is set aside by the Court and that in exercise of such available power, the petitioner had passed the order dated 25.10.1999. The Tribunal, responding to this contention of the writ petitioner, concluded that the discretion was arbitrarily exercised by the Department and that there are no justifiable grounds or reasons for coming to the

conclusion that the salary and emoluments of the respondent for the period of his illegal compulsory retirement should be paid only to the extent of 50% of the amount or for the decision that the entire period should be counted as on duty only for the purpose of pensionary benefits and for no other purposes. Accordingly, relief was granted by the Tribunal.

The learned standing counsel for the Central Government reiterates the same contentions as have found dis-favour by the Tribunal. The lynchpin of the petitioner's case is that discretion is available under F.R.54. Where the only justification for an order of an executive agency is the availability of power and discretion, it is trite that such an order is liable to be characterized as arbitrary. The power conferred on the competent authority under F.R. 54 or 54-A is a public power that is conditioned by a complimentary obligation to exercise it fairly and conscious of the peculiar facts and circumstances of each case.

In the case on hand, on the basis of having been found guilty of four of the five charges, the respondent herein was initially dismissed from service by the disciplinary authority. The appellate authority converted the order of dismissal to one of compulsory retirement. The revisional authority found no evidence whatsoever for all the major charges levelled against the respondent, but found him responsible only for the irregularity in allowing Smt. Raja Rajeswari to work at the Post Office beyond her tenure. Having regard to the fact that the respondent was eventually found guilty of only a minor irregularity in official conduct, the revisional authority in the plentitude of his quasi-judicial discretion and jurisdiction, categorically came to the conclusion that the extreme penalty of dismissal converted as compulsory retirement was incommensurate with the misconduct the respondent was eventually found guilty of. Consequent on this logical process, the revisional authority concluded that a minor penalty of stoppage of three increments and without cumulative effect would be adequate in the context of the minor charge the respondent was eventually found guilty of. Accordingly, the revisional authority modified the penalty to one of stoppage of three increments without cumulative effect. The treatment of a period when a Government Servant has initially been dismissed or removed from service and thereafter reinstated to duty on exercise of appellate, revisional or judicial review powers is an exercise that should be founded on reason and not caprice. The treatment of the period cannot be in a manner,

where, the adverse impact of such treatment would be more prejudicial than the substantive punishment imposed in the disciplinary proceedings.

Where the substantive penalty is one of the stoppages of three increments and without cumulative effect, a minor penalty, it is axiomatic that the treatment of the period under F.R.54 or 54-A cannot adversely impact the Government servant with greater financial damage and distress than the order of penalty itself. Notwithstanding the admonition of the Tribunal that the exercise of the power under F.R.54-A was without any rational foundation, the litigative impulses of the department have not abated and the petitioner has found it fit to carry the litigative saga to this Court.

We find no error in the analysis of facts, appreciation of law or exercise of discretion by the Tribunal, warranting interference in this writ petition.

We find no justification or merits in this writ petition. Writ petition is accordingly dismissed at the stage of admission.

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Date: 04.10.2004 J.CHELAMESWAR, J.

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G. RAGHURAM, J.

Jsu/Knk

To

1. The Member Personnel, Postal Service Board, New Delhi.

2. Sri.A.D.Varu, Sub Post Master, Ibrahimpatnam, R.R.District.

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